IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23103 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE HIGH COURT OF GUJARAT BY & THROUGH B J DHANDHA - Petitioner

Versus

STATE CHIEF INFOMRATION COMMISSIONER & 1 - Respondents

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Appearance :
MR JB PARDIWALA for the Petitioner.
MR NV ANJARIA for Respondent No.1.
MR BS PATEL WITH MRS RANJAN B PATEL for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 03/10/2007

ORAL JUDGMENT

This petition has been preferred against the order dated 10th July,2007 passed by Chief Information Commissioner, State of Gujarat in Second Appeal No.45/2006-07, whereby the order passed by the first Appellate Authority was quashed and set aside and it was directed to supply the information to respondent No.2.

2. Learned counsel for the petitioner submitted that respondent No.2 preferred an application for getting information under the Right to Information Act,2005 to the Public Information Officer, High Court of Gujarat on 1st February,2006, whereby following information were sought for :-

> *(i) Certified copy of report made by Civil Judge (J.D.), Sanand, District: Ahmedabad on 29/7/1997 in the Vigilance Inquiry Case No.285 of 1997.*
>
> *(ii) Certified copy of statement of Court Commissioner Shri V.J. Vanodiya.*
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> *(iii)Certified copy of statement of Ramanbhai Becharbhai Makwana – Respondent No.2.*
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> *(iv) Certified copy of the order passed in the inquiry.*
>
> *(v) Certified copies of statements of other persons/witnesses recorded in the inquiry.*
>
> *(vi) Certified copies of Office Noting on*

file.

3. Learned counsel for the petitioner submitted that the information was pertaining to vigilance inquiry initiated against one Shri V.J. Vanodiya – Clerk serving with District Court, Ahmedabad (Rural). Admittedly, this inquiry was conducted under the level of District Court, Ahmedabad (Rural). As the document of the said inquiry was not with the High Court, the Vigilance Cell of the High Court informed the petitioner in his capacity of Public Information Officer that the papers of Vigilance Inquiry Case No.285 of 1997 was not available with the High Court, to that effect, a letter was also written by Registrar (Vigilance) to Public Information Officer and, therefore, Public Information Officer, High Court of Gujarat relied to respondent No.2 on 27th February,2006 that no such papers are available with the High Court, which are pertaining to Vigilance Inquiry Case No.285 of 1997.

4. Learned counsel for the petitioner submitted that being aggrieved by the aforesaid letter dated 27th February,2006 of the Public Information Officer, First Appeal No.1 of 2006 was preferred by respondent No.2, under Section 19 of the Right to Information Act,2005 (hereinafter referred to as “the Act,2005”) before

Registrar (Administration) – First Appellate Authority of the High Court of Gujarat under the Act,2005. The First Appellate Authority adjudicated the appeal and dismissed the same vide order dated 3rd April,2006.

Being aggrieved by the order dated 3rd April,2006 passed by first Appellate Authority, respondent No.2 preferred Second Appeal No.45/2006-07 before Chief Information Commissioner, State of Gujarat under Section 19 of the Act,2005, who has allowed the Second Appeal and directed the petitioner to supply information sought for by respondent No.2 within 15 days. Against this order, the present petition has been preferred by the petitioner.

5. Learned counsel for the petitioner mainly submitted that the order passed by Chief Information Commissioner, State of Gujarat is erroneous and contrary to the decision rendered by this Court in the case of **Reliance Industries Limited V/s. Gujarat State Information Commission & Others now, reported in AIR 2007 Gujarat 203** as well as against the decision rendered by this Court in the case of **Gokalbhai Nanbhai Patel V/s. Chief Information Commissioner & Others now, reported in 2007(3) G.L.H. 352** and submitted that if the information is pertaining to third party, it cannot be supplied

without following a procedure as laid down by the Act,2005, especially as referred under Section 11 of the Act,2005.

6. Learned counsel for the petitioner further submitted that the impugned order is dehors and contrary to Rule 4 of the Gujarat High Court (Right to Information) Rules,2005. It is also submitted by learned counsel for the petitioner that the Vigilance Inquiry Case No.285 of 1997 was against one Shri V.J. Vanodiya-Clerk serving with District Court, Ahmedabad (Rural). The said inquiry was conducted at the level of District Court, Ahmedabad (Rural). The papers is lying with the District Court, Ahmedabad (Rural) and, therefore, Public Information Officer of District Court, Ahmedabad (Rural) ought to have been made as a party respondent as well as Shri V.J. Vanodiya also ought to have been made as a party respondent because this person's information is asked by respondent No.2. Neither of these two persons are joined as party-respondents and neither these two have been heard before passing the impugned order and, therefore also, the impugned order deserves to be quashed and set aside.

7. Learned counsel for the petitioner further

submitted that as per Rule 4 of the Gujarat High Court (Right to Information) Rules,2005, if the requested information does not fall within the jurisdiction of the authorised person, it shall order return of the application to the applicant in Form C as soon as practicable, normally within fifteen days. This Rule has been followed by Public Information Officer of the High Court of Gujarat. The validity of this Rule 4 is at all challenged before the Second Appellate Authority and, therefore, the Second Appellate Authority ought to have drawn attention to Rule 4 of the Gujarat High Court (Right to Information) Rules,2005 and as this Rule 4 has been properly appreciated by the Second Appellate Authority.

8. Learned counsel for the petitioner submitted that Second Appellate Authority has no power, jurisdiction and authority to direct High of Gujarat to supply information pertaining to third party namely Shri V.J.Vanodiya and it is also pertaining to Vigilance Inquiry conducted by District Court, Ahmedabad (Rural).

9. Learned counsel for the petitioner submitted that if the information is relating to third party, public interest must outweighs the private and individual

interest. The nature of information sought for by respondent no.2 is pertaining to Vigilance Inquiry, disclosure of which affects third party and, therefore, it cannot be supplied without following the procedure as per Section 11 of the Act,2005. This aspect of the matter has not at all appreciated by Second Appellate Authority. At length, learned counsel for the petitioner has placed reliance upon the decision rendered by this Court in the case of **Reliance Industries Limited V/s. Gujarat State Information Commission & Others now, reported in AIR 2007 Gujarat 203** as well as upon the decision rendered by this Court in the case of **Gokalbhai Nanbhai Patel V/s. Chief Information Commissioner & Others now, reported in 2007(3) GLH 352**.

10. Learned counsel for respondent No.1 submitted that the order passed by respondent No.1 is true, correct, legal and in consonance with the facts of the present case. It is further submitted that it is true that the information is pertaining to third party, which is sought for by present respondent No.2. Third party is not joined as a party respondent. If the information is not with the present petitioner then the application must be sent to the concerned Public Information Officer, as per the provisions of the Act,2005 and, therefore, the

order passed by respondent No.1 is true and correct.

11. Learned counsel for respondent No.2 submitted that the order passed by respondent No.1 is absolutely true, correct and in consonance with the facts of the case. The information is pertaining to Vigilance inquiry of one Shri V.J.Vanodiya ought to have been supplied either by High Court of Gujarat or by District Court, Ahmedabad (Rural) and, therefore, this Court may not interfere with the order passed by Chief Information Commissioner, State of Gujarat. The goal to be achieved by the Act,2005 is to supply information and not to withhold the information and, therefore, the order passed by Second Appellate Authority is absolutely true and correct.

12. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, the order dated 10th July,2007 passed by Chief Information Commissioner, State of Gujarat in Second Appeal No.45/2006-07 deserves to be quashed and set aside, for the following facts and reasons:

(i) It appears, prima facie, from the facts of the case that the respondent No.2 is a applicant, who has

applied for getting information under Section 6 of the Right to Information Act,2005 on 1st February,2006. The information, which is sought for is pertaining to Vigilance inquiry conducted by District Court, Ahmedabad (Rural), which is pertaining to one Shri V.J.Vanodiya – clerk working with District Court, Ahmedabad (Rural). This information is pertaining to third party and without giving an opportunity of being heard to the third party namely V.J.Vanodiya, no information can be supplied to respondent no.2.

(ii) It is also kept in mind by all the Public Information Officer, first Appellate Authority as well as Second Appellate Authority under the Right to Information Act,2005 that if any information, which is sought for is relating to third party or supplied by third party or has been treated as confidential by that third party, always a procedure as laid down under Sections 7(7) and 11 of the Act,2005 should be followed scrupulously. In the facts of the present case, no such procedure has been followed as laid down under Section 11 of the Act,2005 and, therefore, the order passed by Second Appellate Authority deserves to be quashed and set aside.

(iii) As the information sought for by respondent No.2

is pertaining to third party i.e. about Vigilance Inquiry of one Shir V.J.Vanodiya – clerk working with District Court, Ahmedabad (Rural), he must be joined as a party-respondent. Neither in the First Appeal nor in the Second Appeal preferred by respondent No.2, Mr.V.J.Vanodiya was joined as a party respondent.

(iv) The information sought for by respondent No.2 is pertaining to Vigilance Inquiry Case No.285 of 1997. The statement of the witnesses in the vigilance inquiry have also been demanded. Admittedly, this inquiry was conducted by District Court, Ahmedabad (Rural). All District Court has its own Public Information Officer. An application was given by respondent No.2 to the High Court of Gujarat and, therefore, Public Information Officer of Gujarat High Court has replied that vigilance inquiry of the aforesaid person has never been conducted by the High Court. It is also informed by Public Information officer, High Court of Gujarat that as no such information is available with the High Court, nothing is required to be supplied to respondent No.2. This communication is dated 27th February,2007. This order is absolutely true, correct and in consonance with the decision rendered by this Court in the case of **Reliance Industries Limited V/s. Gujarat State Information**

Commission & Others now, reported in AIR 2007 Gujarat 203 as well as in the case of **Gokalbhai Nanbhai Patel V/s. Chief Information Commissioner & Others now, reported in 2007(3) GLH 352**.

(v) The information sought for by respondent No.2 was pertaining to a third party and, therefore, Public interest must outweigh the private and individual interest. It has been held by this Court in the case of **Reliance Industries Limited V/s. Gujarat State Information Commission & Others now, reported in AIR 2007 Gujarat 203**, especially in para 11, as under:

> ***11. What satisfaction must be arrived at, prior to disclosure of information about third party :***
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> *Looking to the provisions of the Act especially Section 8(d), 8(j) and proviso to Section 11(1) and looking to the process of disclosing information to the applicant 'relating to or supplied by the third party and treated as confidential by the third party', the Act imposes a duty upon Public Information Officer to arrive at a conclusion that public interest in disclosure outweighs, harm or injury, to the protected interest of such third party, or larger public interest warrants, disclosure of such information.*
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> *In considering whether the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party, the Public Information Officer will have to consider the following :*

(i) The objections raised by the third party by claiming confidentiality in respect of the information sought for.

(ii) Whether the information is being sought by the applicant in larger public interest or to wreak vendetta against the third party. In deciding that the profile of person seeking information and his credentials will have to be looked into. If the profile of the person seeking information, in light of other attending circumstances, leads to the construction that under the pretext of serving public interest, such person is aiming to settle personal score against the third party, it cannot be said that public interest warrants disclosure of the information solicited.

(iii)The Public Information Officer, while dealing with the information relating to or supplied by the third party, has to constantly bear in mind that the Act does not become a tool in the hands of a busy body to settle a personal score.

It has been held by this Court in the case of **Gokalbhai Nanbhai Patel V/s. Chief Information Commissioner & Others now, reported in 2007(3) GLH 352**, especially in para 9, as under:

"9(IV) *Whenever any applicant is applying for getting any information about third party, such information shall be given by Public Information Officer under Section 7 of the Act,2005, only after following procedure prescribed under Section 11(1) of the Act,2005 and also keeping in mind Section 7(7) of the Act,2005. Here no such opportunity of hearing was given to the*

petitioner by Chief Information Commissioner.

9(V) *The concerned authorities have not properly appreciated that the present petitioner was never a party in the First Appeal as well as in the Second Appeal and the order has been passed against the petitioner. No notice was ever issued to the present petitioner and, therefore also, the impugned order deserves to be quashed and set aside. Chief Information Commissioner appears to be ignorant about aforesaid simple judicial process. Bare minimum requirement is, to follow principles of natural justice. "*

(vi) Looking to the **Gujarat High Court (Right to Information) Rules,2005**, especially **Rule 4**, if any application is preferred for getting information, which is not falling under the jurisdiction of the authorised person, it shall order return of the application to the applicant in Form-C as soon as practicable, normally within fifteen days. Looking to the facts of the present case, no such vigilance inquiry was ever conducted by the High Court but it was conducted by District Court, Ahmedabad (Rural). Immediately information supplied by Public Information Officer, High Court of Gujarat to respondent No.2 that as the papers of Vigilance inquiry pertaining to one Shri V.J. Vanodiya- clerk of District Court, Ahmedabad (Rural), were not with the High Court, the application was returned and the order was passed by

Public Information Officer, High Court of Gujarat that such information cannot be supplied to respondent No.2 as it is no available with the High Court nor it is available with the vigilance cell of the High Court. This aspect of the matter has been not appreciated by Second Appellate Authority. **Rule 4 of the Gujarat High Court (Right to Information) Rules,2005**, reads as under:

> ***4. Disposal of application by the authorised person.***
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> *(1) If the requested information does not fall within the jurisdiction of the authorised person, it shall order return of the application to the applicant in Form C as soon as practicable, normally within fifteen days and in any case not later than thirty days from the date of receipt of the application, advising the applicant, wherever possible, about the authority concern to whom the application should be made. The application fee deposited in such cases shall not be refunded.*
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> *(2) If the requested information falls within the authorised person's jurisdiction and also in one or more of the categories of restrictions listed in Sections 8 and 9 of the Act, the authorised person, on being satisfied, will issue the rejection order in Form D as soon as practicable, normally within fifteen days and in any case not later than thirty days from the date of the receipt of the application.*
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> *(3) If the requested information falls within the authorised person's jurisdiction but not in one or more of the categories listed in Sections 8 and 9 of the Act, the authorised person, on being satisfied, shall supply the information to the applicant in Form E, falling within its jurisdiction. In*

case the information sought is partly outside the Jurisdiction of the authorised person or partly falls in the categories listed in Sections 8 and 9 of the Act, the authorised person shall supply only such information as is permissible under the Act and is within its own jurisdiction and reject the remaining part giving reasons therefor.

(4) The information shall be supplied as soon as practicable, normally within fifteen days and in any case not later than thirty days from the date of the receipt of the application on deposit of the balance amount, if any, to the authorised person, before collection of the information. A proper acknowledgement shall be obtained from the applicant in token of receipt of information.

(5) Exemption from disclosure of information – The information specified under Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed :-

(a) Any information which is not in the public domain or does not relate to judicial functions and duties of the Court and matters incidental and ancillary thereto.

(b) Any information which has been expressly forbidden to be published by the Court or the disclosure whereof may constitute Contempt of Court; or information which includes commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the contempt authority is satisfied that larger public interest warrants the disclosure of such information; or information which would impede the process of investigation or apprehension of prosecution of offenders; or information which relates

to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

(c) Any information affecting the confidentiality of any examination conducted by the Gujarat High Court including Gujarat Judicial Service and Gujarat Higher Judicial Service. The question of confidentiality shall be decided by the Competent Authority whose decision shall be final.

(6) Any information which is to be furnished and access to records shall be subject to the restrictions and prohibitions contained in rules/ regulations and destruction of records in force from time to time which may have been notified or implemented by this Court.

(7) Any judicial Officer shall not be compelled to appear in person before the Competent Authorities under the Right to Information Act,2005, if he has made necessary arrangement for production or supply of materials required by the Competent Authorities under the said Act.

In view of the aforesaid Rule, the order passed by Public Information Officer, High Court of Gujarat as well as the order dated 3rd April,2006 passed by first Appellate Authority namely Registrar (Administration), High Court of Gujarat in First Appeal No.1 of 2006 is true and correct. The validity of Rule 4 is not under challenge before Second Appellate Authority and,

therefore, Rule 4 of the Gujarat High Court (Right to Information) Rules,2005 ought to have been followed scrupulously by all the authorities working under the Act,2005. This aspect of the matter has not at all has been appreciated by Second Appellate Authority and, therefore also, the order passed by Second Appellate Authority deserves to be quashed and set aside.

(vii) If the information is pertaining to third party is ordered to be supplied without hearing third party, third party is loosing his right to prefer First Appeal under Section 19 of the Act,2005 and third party is also loosing a right to prefer Second Appeal under Section 19(4) of the Act,2005 and, therefore, third party ought to be joined as party respondent, which has not been joined by present respondent No.2 in his First Appeal as well as in his Second Appeal and, therefore also, the order passed by Second Appellate Authority also deserves to be quashed and set aside.

13. As a cumulative effect of the aforesaid facts and reasons, the order dated 10th July,2007 passed by Chief Information Commissioner, State of Gujarat in Second Appeal No.45/2006-07 is hereby quashed and set aside. Rule made absolute with no order as to costs.

(D.N.PATEL,J)

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